Governing During Impeachment

By Marcus G. Raskin

Congress while asserting its impeachment power must also guarantee to the citizenry a functioning Government within the framework of a constitutional democracy. What follows, in an open memorandum to Congress, is a series of steps designed to achieve this end.

1. If Congress, through formal constitutional means, asserts its loss of confidence in President Nixon by a successful impeachment vote in the House against him, those national emergency powers Congressionally given to the President, and which depend on the President's personal discretion, should be withdrawn. Such powers must revert to Congress.

It may be necessary to divide "emergency" powers. They include powers granted to the President in the event of natural disaster, economic difficulties or trade negotiations; powers over internal security, national security and foreign policy, as well as use of the military and control over it.

The powers that are Congressionally granted to a President do not include his own residual or "inherent" powers. Those are stripped from a President once he is successfully impeached by the Senate, although politically such powers begin to drop from him once the impeachment process begins.

Residual powers have the color of legitimacy only because the President is trusted by Congress and the people. The nation's political health requires that the President's discretion should be sharply decreased once he is impeached. His role must be limited to that of administrator of the laws, thus forfeiting the power of independent policymaking.

2. In the succeeding thirty days, members of the Joint Chiefs of Staff, military commanders, the National Guard, as well as all members of the executive branch and policymaking members of the bureaucracy should be given a memorandum from Congress, signed by its leadership, that details the meaning of their oaths to the Constitution, to the authority of Congress and to the laws of the land.

The oaths and memorandum should be circulated throughout the Government and be posted in Government and military offices, and in paramilitary offices of the Central Intelligence Agency, Federal Bureau of Investigation and Secret Service. The Civil Service Commissioners should meet with appropriate committee chairmen on how to effect smooth operations of the Government during this period.

3. A dialogue should begin among leading members of the judiciary and Armed Services Appropriations and Foreign Affairs Committees to clarify issues and make sure that no foreign or national security crisis occurs because of the impeachment.

Once the House votes impeachment the President should be separated from unilateral decisions on the use of troops or weapons of mass destruction. He and groups within the Government should be insulated from instigating any sort of crisis, military or otherwise, that would disturb the task of weighing impeachment evidence fairly, or the Government's smooth and just functioning. And the United States should conduct its world business without flexing its military muscles, managing its foreign affairs in a careful and deliberate manner.

4. To insure constitutional stability, notification should be given to the chairmen of the appropriate committees and the House and Senate leadership by the Joint Chiefs of Staff, countersigned by the Secretary of Defense, of all troop—including the National Guard—movements, naval movements, deployments inside and outside the United States, as well as security arrangements concerning nuclear arms.

The Defense Department should file information with appropriate committee chairmen and the House and Senate leadership on those covert operations or actions that are likely to, or might, cause internal or international repercussions. This arrangement should hold from the beginning of the impeachment debate on the House floor to the time the President is vindicated or removed from office.

5. A concurrent resolution should be passed rejecting the first use of nuclear weapons.

6. The chairman of the Senate Foreign Relations Committee or the Majority Leader of the Senate, from the beginning of the formal impeachment on the House floor, should sit in on all National Security Council and Cabinet meetings. The Speaker of the House or his nominee should attend Cabinet meetings if he so desires.

7. The Senate and House should prepare a concurrent resolution that states that no troops can be used in battle, hostile actions or war or police actions by the President without legislative concurrence of the House and Senate.

8. The House and Senate leadership should appoint a special committee to receive briefings from career members of the various Government agencies during the impeachment proceedings in the House, during any hiatus between House and Senate action, during the Senate trial, and after the trial until President Nixon is acquitted or a new President is inaugurated.

Watergate events should not be read to mean that the military, or paramilitary groups of the Secret Service, F.B.I. or C.I.A., have been insulated from either corrupt or dangerous practices, from cabals or crimes. Watergate's questionable activities are not the only ones in Washington.

9. The Speaker and the Majority Leader should meet with the heads of the television networks and the Federal Communications Commission to set up telecast times for reporting to the public during the impeachment period. One purpose of such reports would be to sustain loyalty to the constitutional democracy.

10. Meetings should be initiated with mayors and governors, individually and through their collective organizations, to discuss the impeachment period. These leaders should formally receive copies of the basic memorandum to be sent to Federal officials that outlines the powers of Congress to regulate the armed forces, the National Guard and the paramilitary.

11. Since the impeachment period has brought a profound sense of drift in the Government, and important issues have gone unattended, and frightening structural changes in the constitutional system have been made, the sense of drift and some of these structural changes can be corrected.

It is time to develop a national committee of reconciliation that will take in left and right to recommend to Congress a national program in foreign and domestic policy that will lay out what a minimum program must be over the next five years, while stating clearly what national and internal security structures decrease the political and economic freedom and security of citizens.

Such a committee might also begin the task of meeting with appropriate Cabinet heads and the appropriate committees of Congress to discuss a legislative program that would provide the basis for a national-policy dialogue through 1976.

12. One of the crucial problems of the present system is that the people have very little confidence in it. One reason for this loss of confidence is that the citizens do not identify with any branch of Government. Congress as an institution does not directly relate to the people on a daily basis; if otherwise, this would give people the feeling that they are involved in governing.

Members of Congress should establish a mechanism in their districts for public hearings on national and regional issues to define policy. It is especially critical during a period of profound dislocation that our citizens feel they can in fact defend the Constitution and view the Government as a lawful enterprise. This message must be conveyed throughout the entire period of impeachment. And beyond.

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